

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA.

CWP.No. 1296 of 2002

Date of reservation : 25.5.2007

Date of Decision :22 June, 2007

Ashok Kumar

...Petitioner.

Versus:

The Cantonment Board & another

...Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?¹ Yes

For the petitioner: Mr. Praneet Gupta, Advocate.

For respondent No.1. Mr. L. C. Kapoor, Advocate.

Sanjay Karol, J.

Petitioner was appointed as Safai Mazdoor on 22nd January, 1994 by the respondent-Cantonment Board, Dagshai. Prior to this appointment, he had voluntarily worked as Fireman for fire extinguishing work.

For the vacant post of Conservancy Driver in the respondent-Cantonment Board, the petitioner applied on 1.7.2002 amongst other candidates. As per the grievance made by the petitioner without even calling for an interview and conduct of any test, respondent No.1 in a clandestine manner appointed respondent No.2 vide letter dated

¹ Whether reporters of Local Papers may be allowed to see the judgment?

24th August, 2002. Petitioner is thus seeking quashing of the appointment of respondent No.2 in the present writ petition.

Respondent has filed its return stating that general information with regard to the vacancy of the post of driver was given and a regular notice was also published in this regard. As per the classification of post prescribed under the Cantonment Funds Servant Rules, 1937, the post of driver is a promotion post from lower grade employee provided they hold the essential qualifications required for the post. In terms of Rule 5-B(8) of the Rules, appointment to promotion post is to be made by the appointing authority on the basis of seniority list maintained for the purpose by the Board, subject to rejection of those considered unfit. Three applications were received for promotion to the post of driver from the lower grade employees. A Screening Committee consisting of Sanitary Inspector and the Junior Engineer of Cantonment Board, Dagshai, was appointed by the appointing authority to examine the service record and determine the suitability of the applicants. Service record of the petitioner was not found satisfactory and was as such considered unfit for the post and not called for the driving test. In comparison, service record of respondent No.2 was examined, found satisfactory and was called for driving test, which was cleared and was subsequently selected after completion of codal formalities. He joined the service on 27.8.2002. The affidavit pointed out that during the service period of 8 years 6 months, petitioner had been on leave for 240 days in addition to and apart from casual leave and other holidays which he was entitled to. He was served with 24 show cause notices apart from being charge-sheeted, suspended for some time and penalty of fine imposed. In addition thereto, a complaint of trespassing in Girls' Hotel and Army Public

School, Dagshai, was also there. His past conduct was found to be irresponsible, negligent, unreliable and unfit for promotion to the post of conservancy driver. An irregular and absenting person working as conservancy driver could not be entrusted with the job which would result in creating most unsanitary and unhygienic conditions in the area. 3rd candidate was ineligible for want of possessing educational qualification, therefore, was not considered.

In the rejoinder, it is clarified that the criminal complaint made against the petitioner for having trespassed into Girls' Hostel was found to be false and the petitioner was honourably acquitted by the Court of Chief Judicial Magistrate, Solan.

Service record of the petitioner was summoned and perused. From the record, it is clear that the petitioner was charge-sheeted on 19.9.2000 & 14.8.2002 for absenting from duty. In addition thereto, various show cause notices have been issued for his absence without prior information or sanctioned leave. Starting from 1994, there are various letters including letters dated 19.8.2002, 6.6.2002, 24.1.2001, 30.9.2000 & 6.3.2000, whereby the petitioner has admitted unauthorized absence and has tendered an apology with an assurance not to repeat the same in future. He was under suspension for some time. Record also shows that the Vice Principal of Army Public School has made a complaint against the petitioner for allegedly trespassing into the Girls' Hostel Complex at night.

From the aforesaid, it is clear that the Screening Committee set up by the respondent-Board, after examining the service record found the petitioner not suitable for promotion to the post of driver to carry out the conservancy service. Obviously, health and hygiene is necessarily

required to be maintained at all times. It is one of the important functions and duties of the Board. From the record, it is clear that the petitioner has been unauthorizedly absenting himself from time to time. His absence as a driver would hamper the respondent-Board in discharging his duties and obligation. Respondent-Board in its wisdom found him unfit and not suitable.

Shri L. C. Sood, learned counsel for the respondent-Board has relied upon 1992 Supp-2 SCC 481 (***National Institute of Mental Health and Neuro Sciences vs. Dr. K. Kalyana Raman and others***) to contend that it was for the Committee to assess the relative merit and recommend the name for appointment and no reason was required to be given in support of its decision for not selecting the petitioner. I see no infirmity in the selection process adopted by the respondent-Cantonment Board in screening out the petitioner and appointing respondent No.2.

For all the aforesaid reasons, present writ petition is dismissed.

(**Sanjay Karol**),
Judge.

June 22, 2007.
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